LOW AH KEE v. REGINA

[A. Cr. J. (Rose C.J.) October 16, 1959]

[Singapore — Magistrate's Appeal No. 15 of 1959]

Criminal Law and Procedure — Forfeiture of taxicab — Taxicab let on hire — Vehicle being used in the commission of offence contrary to the Customs Ordinance (Cap. 160), s.104(1)(c).

The appellant complained of an order of forfeiture made by the Magistrate with regard to a taxicab of which he is the owner. The taxicab in question was let out to one or two drivers on normal terms of hire, and one of these drivers was found in possession of a considerable quantity of "uncustomed" cigarettes, which were inside the taxicab. The appellant did not know of the improper use to which his cab was being put.

Held: forfeiture cases must depend upon their particular facts. In the present case a considerable bulk of cigarettes was being carried, and therefore it was a reasonable conclusion on the part of the Magistrate that the vehicle in question was being used in the commission of the offence in question, whether it was one of being in possession of or of conveying uncustomed goods.

MAGISTRATE'S APPEAL.

A. P. Rajah for the appellant.

A. V. Winslow (Solicitor General) for the respondent.

Rose C.J.: The appellant complains of an order of forfeiture made by the 8th Magistrate's Court with regard to a taxicab of which he is the owner.

The appellant was in the habit of letting out his taxicab to one or two drivers on normal terms of hire. One of these drivers was found in possession of a considerable quantity of "uncustomed" cigarettes, which were inside the taxicab in question.

It is conceded that the appellant did not know of the improper use to which his cab was being put. Learned counsel for the appellant contends that in view of the learned Magistrate's finding in paragraph 4 of his Grounds of Decision that "The Court is satisfied from the evidence adduced . . . . . that an offence under section 104(1)(c) of the Customs Ordinance has been committed and that taxi S.H. 1935 was used in the commission of such offence" the vehicle should not be forfeited for the reason that the taxi was not used "in the commission" of the offence of being in possession of the cigarettes.

It may well be that the evidence adduced before the Magistrate would have been more appropriately considered to fall under section 104(1)(d) which relates to "conveying" uncustomed goods.

Be that as it may, it seems to me that having regard to the facts of this particular case — and all these forfeiture cases must depend upon their particular facts — it was apparent that transport of some kind, such as a motor car, was essential for the purposes upon which the convicted man was engaged. There may well be cases in which, for example, a small uncustomed object is being conveyed in which the fact that it is found in a motor car would be immaterial, as a car would not have been necessary for the commission of the offence and it might therefore reasonably be considered that the car was not being used for the commission of the offence. In the present case, however, where a considerable bulk of cigarettes was being carried, it seems to me to be a reasonable conclusion on the part of the learned Magistrate that the vehicle in question was being used in the commission of the offence in question, whether it was one of being in possession of or of conveying uncustomed goods.

This seems to me to be sufficient to determine the appeal, which must be dismissed.

Appeal dismissed.

Solicitors: *Tan, Rajah & Cheah.*

ANG HIAN & ORS. v. REGINA

[A. Cr. J. (Rose C.J.) October 16, 1959]

[Singapore — Magistrate's Appeal Nos. 131 & 132 of 1959]

Dangerous Drugs — Consumption of prepared opium — Dangerous Drugs Ordinance (Cap. 137), s.10(2)(b) — Interpretation.

In this case the appellants were charged with being found in a place used for the purpose of smoking prepared opium contra section 10(2)(b) of the Dangerous Drugs Ordinance. The sub-section reads: "If any person smokes or otherwise consumes prepared opium or frequents any place or places used for the purpose of smoking or otherwise consuming prepared opium, he shall be guilty of an offence . . . ."

Held: section 10(2)(b) must be interpreted to mean that the place in question must have been contemporaneously or currently used for smoking or otherwise consuming prepared opium.

MAGISTRATE'S APPEAL.

E. W. Barker for the 1st appellant.

D. G. Osborne-Jones for the 2nd appellant.

M. Karthigesu for the 3rd appellant.

A. V. Winslow (Solicitor General) for the respondent.

Rose C.J.: The learned Solicitor General conceded that the convictions of the three appellants could not be upheld.

The three appellants were charged with being found in a place used for the purpose of smoking prepared opium, contra section 10(2)(b) of the Dangerous Drugs Ordinance.

The facts, which were not substantially in dispute, were that the three appellants were found in the room in question in circumstances which were not personally incriminating. In the room an opium pipe was found, not conspicuously placed, as also were a few other implements which are appropriate for opium smoking. There was no evidence of anyone having recently smoked in the room. Indeed, such evidence as there was would lead one to a contrary inference.

It is sufficient to decide this case upon a single point, namely, that section 10(2)(b) of the Ordinance must, in my opinion, be interpreted to mean that the place in question must have

been contemporaneously or currently used for smoking or otherwise consuming prepared opium.

By "contemporaneous" I do not mean to impose a rigid time qualification. Evidence of very recent use would, no doubt, be sufficient but it is, in my opinion, in which the learned Solicitor General concurs, not sufficient for the prosecution to adduce evidence from which the most that could be inferred is that the place in question may once upon a time have been used, or may be intended in the future to be used, for smoking opium.

As was indicated at the close of the hearing the appeals must be allowed and the convictions set aside.

Appeals allowed.

Solicitors: *Lee & Lee; Osborne-Jones & Co.; Allen & Gledhill.*

Re BAKAR BIN AHMAD

[R. Cr. J. (Rigby J.) July 18, 1959]

[Penang — Criminal Revision No. 12 of 1959]

Criminal Law and Procedure—Police supervision — Imposition of — Particulars of previous convictions — Production of.

Penal Code s.354 — Indecent assault — Whether imposition of police supervision justified.

The power to impose Police supervision is a measure that should be resorted to sparingly by Magistrates and then only in the most appropriate cases. Its sole object and only justification is to ensure that in the interests of public security the Police are in a position to exercise some measure of control over the movements and activities of persons of known bad character — such as burglars, pickpockets and common thieves who habitually and consistently lead a life of criminal dishonesty. It should therefore not be imposed by way of an additional punishment. The imposition of Police supervision and the consequent difficulties and restraint it puts upon the prisoner after his release does more harm than good.

Particulars of previous convictions should be produced by the prosecution and — after they have been specifically put to and admitted or denied, as the case may be, by the accused — either be attached to the Magistrate's record, or he should himself take down upon his record of the case the full particulars thereof. Such details are necessary in the event of the case being required by the High Court.

In this case the accused was convicted of indecent assault under section 354 of the Penal Code, the facts accepted by the Magistrate being that the accused accosted a woman in or near a durian plantation and attempted to embrace her. He was sentenced to 6 weeks' imprisonment followed by Police supervision. On revision the order for Police supervision was set aside on the ground that neither the facts of the case nor the past record of the accused justified the order.

REVISION IN CHAMBERS.

Parties absent.

Rigby J.: The accused in this case was convicted of indecent assault under section 354 of the Penal Code.

The facts, as accepted by the Magistrate, were that the accused accosted a woman in or near a durian plantation and attempted to embrace her.

The Magistrate sentenced him to six weeks' imprisonment. Under section 12(6) of the Criminal Procedure Code the Magistrate further directed that upon the expiration of his sentence the accused be subjected to police supervision for a period of three months.

The accused, a Malay aged 27, had three previous convictions over a period of, I understand, the last five years for offences as varied as housebreaking and theft (in respect of which, I further understand, he was bound over), defacing an identity card and house trespass.

In my view, neither the facts of this case nor the past record of the accused justified the order for police supervision.

Police supervision should not be imposed by way of an additional punishment. Its sole object and only justification, as I understand it, is to ensure that in the interests of public security the Police are in a position to exercise some measure of control over the movements and activities of persons of known bad character — such as burglars, pickpockets and common thieves — who habitually and consistently lead a life of criminal dishonesty.

There are many Judges, Magistrates and Prison Officers of long experience who consider the imposition of police supervision and the consequent difficulties and restraint it puts upon the prisoner after his release — including, unfortunately, in many cases the undoubted difficulty a prisoner subject to police supervision may well encounter in his genuine efforts to secure and, of more importance, to maintain regular employment — does more harm than good.

In my view, the power to impose police supervision is a measure that should be sparingly resorted to by Magistrates and then only in the most appropriate cases.

The order for police supervision in this case is accordingly set aside.

I observe from the record in this case that after the Magistrate had convicted the accused the Prosecuting Officer informed the Court that the accused had three previous convictions and the record states that the accused admitted those previous convictions. No particulars of the previous convictions are, however, attached to the record of the case. Either a copy of the particulars of the previous convictions should be produced by the prosecution and — after they have been specifically put to and admitted or denied, as the case may be, by the accused — attached to the Magistrate's record, or the learned Magistrate should himself take down upon his record of the case the full particulars of the previous convictions. Such details are obviously necessary in the event of the case being required, as in this instance, by the High Court.

Order accordingly.